



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R6-ES-2014-0048; FXES11140600000-234-FF06E22000]

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the R-Project Transmission Line Revised Habitat Conservation Plan, Nebraska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; virtual public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), provide this notice to open a public scoping period and announce virtual public scoping meetings, in accordance with requirements of the National Environmental Policy Act and its implementing regulations. The scoping period is associated with the preparation of a supplemental environmental impact statement (SEIS) to the February 2019 *Final Environmental Impact Statement on Issuance of an Incidental Take Permit and Implementation of a Habitat Conservation Plan for the R-Project Transmission Line*. Nebraska Public Power District (NPPD, applicant) is preparing a revised habitat conservation plan (HCP) in support of its anticipated resubmission of an application for an incidental take permit (ITP) under the Endangered Species Act (ESA) for activities it will undertake in constructing, operating, and maintaining a new transmission line (known as the R-Project) in central Nebraska. The SEIS will evaluate the impacts on the human environment related to the proposed issuance of the ITP and implementation of the HCP, including addressing the issues identified by the U.S. District Court for the District of Colorado in its remand of the ITP that FWS issued June 12, 2019.

DATES: Submitting Comments: We will accept online or hardcopy comments.

Hardcopy comments must be received or postmarked on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

(See **ADDRESSES**.) Comments submitted online at <https://www.regulations.gov/> must

be received by 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Public Meetings: The FWS will hold 2 virtual public scoping meetings during the scoping period at the following times:

- December 8, 2022, at 10:00 a.m. CST
- December 8, 2022, at 6:30 p.m. CST

Registration and information on the virtual public meetings are available at <https://www.fws.gov/project/r-project-transmission-line>. Additionally, a recording of a public scoping meeting will be available for viewing by the public online, at <https://www.fws.gov/project/r-project-transmission-line> and at the following locations:

- North Platte Public Library, 120 W 4th St, North Platte, NE 69101;
- Thomas County Library, 501 Main St, Thedford, NE 69166;
- Taylor Public Library, 106 William St., Taylor, NE 68879.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Follow the instructions for submitting comments on FWS-R6-ES-2014-0048.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R6-ES-2014-0048; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see **Public Scoping Process** under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jeff Runge, by telephone at 308-382-6468, or by email at jeff_runge@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United

States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

The U.S. Fish and Wildlife Service (FWS) issued an incidental take permit (ITP) to Nebraska Public Power District (NPPD) on June 12, 2019, authorizing incidental take of the American burying beetle (*Nicrophorus americanus*) that would result from the R-Project, a 345,000-volt, 226-mile-long transmission line. The *Federal Register* notice of availability for ITP, Habitat Conservation Plan (HCP), and Final Environmental Impact Statement published on February 8, 2019 (84 FR 2900). The proposed project starts at NPPD's Gerald Gentleman Substation near Sutherland, Nebraska; goes north to a 345 kV substation located in Thomas County near Thedford; and then extends eastward to another 345 kV substation sited in Holt County, which is to interconnect with Western Area Power Administration's existing Fort Thompson to Grand Island 345 kV line that is located on the eastern border of Holt County. The purpose of the R-Project is three-fold: (1) relieve electrical congestion within the existing transmission system; (2) enhance system reliability; and (3) provide opportunities for development of renewable resources. On June 17, 2020, the U.S. District Court for the District of Colorado issued a decision on a lawsuit challenging the FWS's decision to issue the ITP under the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and the National Historic Preservation Act. In its ruling, the court vacated and remanded the ITP to the FWS for further proceedings consistent with the court's order. The FWS is preparing a Supplemental Environmental Impact Statement (SEIS) to address the anticipated resubmission of NPPD's ITP application, the issues identified by the court, and to address new information and changes in circumstances, as relevant, to the R-Project Revised HCP.

In accordance with section 10(a)(2)(A) of the ESA, NPPD intends to submit the Revised HCP to the FWS in support of a resubmitted application for an ITP for the

threatened American burying beetle. The requested ITP would authorize incidental take of the American burying beetle likely to result from construction and anticipated emergency repairs of the R-Project. The Revised HCP is required to include measures to minimize and mitigate the impacts of the taking on American burying beetle to the maximum extent practicable.

We intend to prepare a draft SEIS and, later, a final SEIS, to evaluate the effects on the human environment of issuing an ITP under the anticipated resubmitted application, and NPPD's implementation of the R-Project Revised HCP. The SEIS is necessary to meet our requirements under NEPA; 42 U.S.C 4321 *et seq.*) and its implementing regulations. The FWS's purpose and need for the proposed action is to (1) process the applicant's resubmitted request for an ITP and (2) either grant, grant with conditions, or deny the ITP request in compliance with the FWS's authority under applicable law, including, without limitation, section 10(a)(1)(B) of the ESA and applicable ESA implementing regulations.

Preliminary Proposed Action and Alternatives

Consistent with 40 CFR 1501.9(d)(2), the preliminary description of the proposed action is issuance of an ITP authorizing incidental take of a covered species in association with covered activities and Revised HCP implementation.

The draft SEIS will include a reasonable range of alternatives, which may include but are not limited to scope of the covered activities, variations in the level of permitted take, the length of the permit term, type of conservation minimization and mitigation measures, and implementation and effectiveness monitoring. Additionally, a No Action Alternative will be included, in which the FWS would not issue an ITP and would assume that NPPD would not construct the R-Project.

Background

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as

endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulations as “an act which actually kills or injures wildlife” (50 CFR 17.3). “Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 222.102).

Under section 10(a) of the ESA, FWS may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures the FWS may require as being necessary or appropriate for the purposes of the HCP.

R-Project Revised Habitat Conservation Plan

NPPD intends to implement the R-Project Revised HCP to cover construction and

anticipated emergency repairs of the R-Project. The R-Project Revised HCP includes measures to minimize and mitigate impacts of the taking on American burying beetle. NPPD is expected to request a 50-year ITP from the FWS.

Covered Activities

The proposed covered activities will likely include:

- **Access:** Creation of temporary access routes and permanent access roads.
- **Right-of-way preparation:** Removal of trees and tall brush from the 200-foot-wide right-of-way.
- **Temporary work areas:** Grading and filling to create temporary work areas including assembly areas, construction yard, staging areas, and structure work areas.
- **Tower installation:** Construction associated with power line foundation installation and structure erection.
- **Power line installation:** Stringing, pulling, and tensioning necessary for power line placement on towers.
- **Relocation of existing infrastructure:** Relocation of existing overhead distribution power lines and livestock and center-pivot irrigation wells to outside the right-of-way.
- **Emergency repairs:** Repairs to isolated damages, such as single insulators or weak points on conductors, as well as large-scale repairs following damage from severe weather events.
- **HCP Implementation Activities:** Activities identified in the conservation strategy and monitoring program that may result in short-term effects on covered species.

Covered Species

The American burying beetle is the species anticipated to be proposed for coverage under the R-Project Revised HCP and ITP. The American burying beetle is known to occur within the proposed corridor for the R-Project. The R-Project Revised HCP will include an analysis of impacts to American burying beetle and methodology for estimating and quantifying take from covered activities and minimization and mitigation measures. The R-Project Revised HCP is anticipated to include analysis of evaluated species, which are species that may occur in the project area but for which NPPD is not requesting take authorization. The HCP describes measures to avoid take of these species. Species anticipated as evaluated species may include the following:

- Bald eagle (*Haliaeetus leucocephalus*)
- Blanding's turtle (*Emydoidea blandingii*)
- Blowout penstemon (*Penstemon haydenii*)
- Golden eagle (*Aquila chrysaetos*)
- Northern long-eared bat (*Myotis septentrionalis*)
- Tricolored bat (*Perimyotis subflavus*)
- Piping plover (*Charadrius melodus*)
- Rufa red knot (*Calidris canutus rufa*)
- Topeka shiner (*Notropis topeka* [=tristis])
- Western prairie-fringed orchid (*Platanthera praeclara*)
- Whooping crane (*Grus americana*)

Measures to minimize and mitigate impacts on the American burying beetle will be described in the Revised HCP as conservation measures and conditions on covered activities, guided by goals and objectives in the conservation strategy of the Revised HCP. These measures would be systematically implemented and monitored for success. Impacts would be offset by the protection of high-quality habitat for the American burying beetle. Minimization and mitigation measures are subject to adaptive management to ensure their effectiveness and to ensure achievement of the R-Project HCP's biological goals and objectives.

The R-Project Revised HCP will include funding information and assurances, monitoring requirements, adaptive management, and changed circumstance provisions to

help ensure conservation outcomes for American burying beetle. Annual reports would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding.

Summary of Expected Impacts

The draft SEIS will identify and describe the effects of the proposed Federal action on the human environment that are reasonably foreseeable, including direct, indirect, and cumulative effects. This includes effects that occur at the same time and place as the proposed action or alternatives and effects that are later in time or farther removed in distance from the proposed action or alternatives. Expected impacts may include, but are not limited to, positive and negative impacts to the American burying beetle, biological resources, visual resources/aesthetics, and cultural and historic resources. The effects of these expected impacts will be analyzed in the SEIS (see 40 CFR 1508.1(g) and 40 CFR 1502.16).

Schedule for the Decision Making Process

The FWS will conduct an environmental review to analyze the effects of the proposed permit action, along with other alternatives considered and the associated impacts of each alternative for the development of the draft SEIS. Following completion of the environmental review, the FWS will publish a notice of availability and request for public comments on the draft SEIS and the draft Revised HCP resubmitted with the ITP application. The FWS expects to make the draft SEIS and draft HCP available to the public in summer 2023. After public review and comment, the FWS will evaluate the permit application and associated documents, and any comments received, to determine whether the requirements of section 10(a)(2) of the ESA and implementing permit regulations are met. The FWS expects to make the final SEIS and final Revised HCP available to the public in spring 2024. At least 30 days after the final SEIS is available, the FWS's record of decision will be completed in accordance with applicable

timeframes established in 40 CFR 1506.11. If appropriate, the FWS would issue the ITP after the issuance of the record of decision. If issued, the permit may include such terms and conditions deemed necessary or appropriate to carry out the purposes of the ITP and the Revised HCP.

Public Scoping Process

Virtual Public Meeting

This notice of intent initiates the scoping process, which aids in the development of the EIS.

See **DATES** and **ADDRESSES** for the date and time of the virtual public scoping meetings. The virtual public scoping meetings will provide FWS with an opportunity to present to the public information pertinent to the R-Project Revised HCP, and for the public to ask questions on the scope of issues and alternatives that FWS should consider when preparing the SEIS. We will accept only written comments. Written comments may be submitted by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations to attend and participate in the virtual public scoping meetings should contact the FWS's Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible. To allow sufficient time to process requests, please make contact no later than 1 week before the desired public meeting. Information and documents are available in alternative formats upon request.

Request for Information

We request comments on the proposed action, concerning the scope of the analysis and identification of relevant information, studies, and analyses from the public; affected Federal, State, Tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. We will consider these comments in

developing the draft SEIS. Specifically, we seek:

1. Biological information, analysis, and relevant data concerning the covered species, evaluated species, and other wildlife;
2. Potential effects that the proposed permit action could have on the covered species, and/or other endangered or threatened species, and their associated ecological communities or habitats;
3. Potential effects that the proposed permit action could have on other aspects of the human environment;
4. Other possible reasonable alternatives that FWS should consider, including additional or alternative avoidance, minimization, and mitigation measures;
5. The presence of historic properties—including archaeological sites, buildings, and structures; historic events; sacred and traditional areas; and other historic preservation concerns—in the proposed plan and permit area, which are required to be considered in project planning by the National Historic Preservation Act;
6. Information on other current or planned activities in, or in the vicinity of, the R-Project and their possible impacts on the covered species, including any connected actions that are closely related and should be discussed in the same draft SEIS; and
7. Other information relevant to the R-Project Revised HCP and its impacts on the human environment.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R6-ES-2014-0048, at <https://www.regulations.gov/>.

Next Steps

Once the draft SEIS is prepared, there will be further opportunity for comment on the proposed permit action through an additional public comment period.

Lead and Cooperating Agencies

The FWS is the lead agency for the NEPA process. Cooperating agencies include the Advisory Council on Historic Preservation, History Nebraska, the Nebraska Game and Parks Commission, the National Park Service, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. The FWS welcomes inquiries from other Federal, State, or Tribal, or local agencies potentially interested in being a cooperating agency for the NEPA process.

Decisionmakers and Nature of Decision to Be Made

The decisionmaker is the FWS Regional Director of the Mountain-Prairie Region. If, after publication of the record of decision, the agencies determine that all requirements are met for ITP issuance, the decisionmaker will issue a decision on the requested ITP.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA regulations on the publication of a notice of intent to

issue an EIS (40 CFR 1501.9(d)).

Drue DeBerry,
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Ecological Services,
Mountain-Prairie Region.

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